IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 180 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGILAL MANMAL JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 180 of 2002

MR UTPAL M PANCHAL for Petitioner No. 1

MR SAMEER DAVE APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/03/2003

ORAL JUDGEMENT

The order passed by this Court in this matter

dtd.23/4/2002 is recalled and quashed and set aside and following order is passed :-

1. The present petition is filed by the petitioner against the order dtd.7/1/2002 passed by the respondent No.2 in appeal, confirming the order dtd.14-18/8/2001 passed by the respondent No.3.

2. Heard the learned counsel for the respective parties.

3. Mr.UM Panchal learned counsel for the petitioner has submitted that the respondent No.3 authority has issued show cause notice to the petitioner on 2/11/2000 asking the petitioner to show cause why he should not be externed from the jurisdiction of Police Commissioner, Surat City as well as from Surat Rural and from contiguous districts namely Bharuch, Navsari and Valsad for a period of two years, for the reasons mentioned in the show cause notice. He has further submitted that thereafter, the petitioner replied to the said show cause notice along with written arguments. He has further submitted that thereafter, the respondent No.3 has passed the impugned order on 14-18/8/2001 directing the petitioner to furnish bond of Rs.10,000/- for good conduct for a period two years with a personal bond of the like amount. which is illegal, improper and against the subjective satisfaction arrived at by the respondent No.3 himself in the impugned order. Submitting accordingly, the learned counsel for the petitioner has submitted that the impugned order is required to be quashed and set aside in the facts and circumstances of the case and in the interest of justice.

4. Having heard the learned counsel Mr.Panchal for the petitioner and learned APP Mr.Sameer Dave and considering the evidence on record, it is clear that the respondent No.3 has passed the impugned order without considering the written reply. Further, the respondent No.3, in the impugned order itself, has come to the conclusion that the alleged offences proposed for externment of the petitioner, are question of law and order rather than public order. The respondent No.3 in the impugned order has also come to the conclusion that the statements given by the witnesses regarding unregistered offences are two months prior to 19/6/2000 and thereafter no offence in breach of public order has come on record against the petitioner. When the respondent No.3 has come to the aforesaid conclusions, the respondent No.3 ought not to have passed the impugned order directing the petitioner to furnish bond of

Rs.10,000/- for good conduct for a period two years with a personal bond of the like amount. The impugned order is contrary to the subjective satisfaction arrived by the respondent No.3 and suffers from non-application of mind which has been confirmed by the respondent No.3 mechanically.

5. For the foregoing reasons, the petition is allowed. The impugned order 7/1/2002 passed by the respondent No.2 in appeal, confirming the order dtd.14-18/8/2001 passed by the respondent No.3 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(R.P. DHOLAKIA, J.)

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